

Message Text

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SUBJECT: NSSM 232: SVALBARD (SPITZBERGEN)

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SUMMARY. BELGIAN POSITION ON SPITZBERGEN AND EMBASSY'S COMMENTS
ON BELGIAN ATTITUDE TOWARDS SPITZBERGEN ARE PRESENTED.
END SUMMARY

1. BELGIAN POSITION ON SPITZBERGEN CONTINENTAL SHELF AND
SECURITY QUESTION POSED BY SOVIET ACTIVITIES THERE LAST DEFINED
ON 12 FEB 74. FOREIGN MINISTRY ON THAT DATE SENT BELGIAN
AMBASSADOR IN NORWAY OUTLINE OF ITS POSITION ON THESE QUESTIONS,
WHICH HAS NOT CHANGED SUBSEQUENTLY. FOLLOWING IS EMBASSY
TRANSLATION OF THE SUBSTANTIVE PORTION OF THAT COMMUNICATION
(FACT WE HAVE DOCUMENT IS NOFORN; SUBSTANCE MAY BE DISCUSSED):

"THE TREATY OF PARIS OF 9 FEB 1920 TO WHICH BELGIUM ADHERED
ON 27 MAY 1925 IS RATHER CLEAR. ARTICLE 3 GIVES TO THE CONTRACTING
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PARTIES (AND THUS TO BELGIUM BECAUSE IT DOES NOT SAY SIGNATORY

STATES), EQUAL FREEDOM OF ACCESS TO THE TERRITORY FORMED BY BEAR ISLAND AND THE ISLANDS LOCATED BETWEEN 10 AND 35 DEGREES EAST LONGITUDE AND 74 AND 81 DEGREES NORTH LATITUDE.

"ARTICLE 2 GIVES THE RIGHT TO FISH AND HUNT IN THESE REGIONS AND 'THEIR TERRITORIAL WATERS'" ARTICLE 3 GIVES EQUAL TREATMENT TO MINING ENTERPRISES BOTH ON LAND AND IN TERRITORIAL WATERS. ARTICLE 7 FORESEES IN THE SAME ZONE THE EXERCISE OF THE RIGHT OF PROPERTY 'INCLUDING MINING RIGHTS'.

"TAKING THESE TEXTS LITERALLY THEY GIVE THESE RIGHTS ONLY FOR THE TERRITORIAL SEA, HOWEVER, IT MUST BE REALIZED THAT IN 1920 ONLY THE CONCEPT OF THE TERRITORIAL SEA WAS KNOWN. THE CONCEPT OF THE CONTINENTAL SHELF APPEARED ONLY WITH THE TRUMAN PROCLAMATION OF 1945 AND ENTERED INTO INTERNATIONAL LAW ONLY BY THE 1958 GENEVA CONVENTION. IN 1920 ALL WHICH WAS NOT TERRITORIAL SEAS WAS CONSIDERED HIGH SEAS OPEN TO ALL.

"THE 1920 TREATY DID NOT INCORPORATE SPITZBERGEN IN NORWEGIAN TERRITORY. THE PREAMBLE RECOGNIZED NORWEGIAN SOVEREIGNTY OVER THE SPITZBERGEN ARCHIPELAGO, GIVING THAT GROUPING ITS OWN INTERNATIONAL STATUS WITH CERTAIN CONDITIONS. IT, THUS, IS A DEPENDENCY OF NORWAY AND NOT PART OF NORWAY PROPER. INNOVATIONS IN INTERNATIONAL LAW SUBSEQUENT TO SIGNATURE OF THE TREATY MUST BE APPLIED 'MUTATIS MUTANDIS' TO THE ARCHIPELAGO. THE LATTER, THEREFORE, HAS ITS OWN CONTINENTAL SHELF AS IT WILL HAVE ITS OWN ECONOMIC ZONE IF THE THIRD LAW OF THE SEA CONFERENCE AGREES TO THIS CONCEPT (WHICH, BY THE WAY, THE NORWEGIANS HAVE VIGOROUSLY PREACHED). THE PRINCIPLE OF EQUALITY OF RIGHTS FOR THE CONTRACTING STATES SHOULD NORMALLY APPLY.

"THE 'SECURITY' ASPECT OF THE QUESTION APPEARS EXAGGERATED BY NORWAY FOR OBVIOUS REASONS. IN FACT THE 1920 TREATY DEMILITARIZED SPITZBERGEN IN ARTICLE 9 BY AFFIRMING THAT NORWAY AGREED NEITHER TO BUILD NOR TO PERMIT THE ESTABLISHMENT OF ANY NAVAL BASE IN THE REGIONS UNDER DISCUSSION AND TO BUILD NO FORTIFICATION IN THESE REGIONS, WHICH SHOULD NEVER BE USED FOR MILITARY PURPOSES. IT IS NORWAY'S RESPONSIBILITY TO SEE THAT THIS PROVISION IS RESPECTED, WHICH DOES NOT PREVENT FREEDOM OF NAVIGATION FOR THE WARSHIPS OF ANY STATE WHATSOEVER. WE DO NOT UNDERSTAND HOW

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THE EXPLOITATION OF RESOURCES BY OTHER POWERS WOULD BE OF SUCH A NATURE AS TO MODIFY THIS SITUATION. FURTHERMORE, THIS STATUS CONFORMS TO THE PREAMBLE OF THE TREATY WHICH INVOKES THE WISH 'TO SEE THESE REGIONS PROVIDED WITH AN EQUITABLE REGIME OF ITS OWN TO ASSURE THEIR DEVELOPMENT AND PEACEFUL UTILIZATION.'"

2. BELGIAN GOVERNMENT INTEREST IN SPITZBERGEN QUESTIONS IS MARGINAL, EXCEPT FOR LEGAL QUESTION OF PRINCIPLE RAISED OVER

SPITZBERGEN CONTINENTAL SHELF. BELGIUM HAS NO ECONOMIC INTERESTS IN SPITZBERGEN AREA. BELGIAN GOVERNMENT LOS EXPERT HAS BEEN FOLLOWING NORWEGIAN/SOVIET TALKS RE DELINEATION OF BARENTS SEA SHELF, BUT BELGIAN GOVERNMENT HAS NOT AND WILL NOT TAKE POSITION. BELGIANS NOTE THERE IS NO ISSUE OF LAW INVOLVED, AS SOLUTION IS UP TO PARTIES INVOLVED IN ABSENCE OF AN OTHER AGREEMENT, AND THE "EQUIDISTANT" RATHER THAN "SECTOR" PRINCIPLE APPLIES (THOUGH THERE ARE THREE DIFFERENT "EQUIDISTANT" SYSTEMS, ALL VALID, EACH PRODUCING DIFFERENT RESULTS). BELGIUM HAS NEVER CONSIDERED SPITZBERGEN AS AN ISSUE FOR NATO DISCUSSION. THAT VIEW IS NOT APT TO CHANGE UNLESS NEW SITUATION OR FACTS ARE BROUGHT TO LIGHT. FIRESTONE

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